IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 345 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RASIK CHATURBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

MR LAXMANBHAI A AMAR for Petitioner No. 1

MS HANSA PUNANI APP for Respondents

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 11/04/2002

ORAL JUDGEMENT

Rule. Ms. Hansa Punani, learned APP is directed to waive service.

2. The present petition is filed by the petitioner against the orders dtd.20/2/001 passed by the respondent No.1 in appeal (Annexure-B), confirming the order dtd.20/12/2000 passed by the respondent NO.2

(Annexure-A).

3. Heard the learned counsel for the respective parties.

4. Mr.LA Amar, learned counsel for the petitioner has submitted that the externing authority has issued show cause notice to the petitioner on 7/2/2000 asking the petitioner to show cause why the petitioner should not be externed. The learned counsel for the petitioner has further submitted that the externing authority has passed the order on 20/12/2000 externing the petitioner from the area falling under the Police Commissioner, Ahmedabad as well as from contiguous districts namely Ahmedabad Rural, Gandhinagar, Kheda and Mehsana, for a period of two years, illegally and without considering the evidence on record. He has further submitted that the said order is passed by the externing authority exparte. The learned counsel for the petitioner has submitted that the externing authority has passed the impugned externment order relying upon the offence registered in the month of July, 2001. According to the learned counsel for the petitioner, there is no live nexus between the alleged offence and date of passing impugned externment order. He has further submitted that the alleged offence is registered in the month of July, 1999 and the impugned externment order is passed on 20/12/2000 and, therefore, there is an inordinate delay of about one year and five month in passing the impugned externment order and the externing authority has not explained the delay and hence the impugned externment order is required to be quashed and set aside. In support of his arguments, learned counsel for the petitioner has relied upon the decision rendered by this court in the case of CHOTHMAL SAGANSINGH RAJPUT VS. STATE OF GUJARAT, reported in 1989(1) G.L.R. page 63. Head-note of the said judgement is as under :-

> Constitution of India, 1950 - Art.19 - Freedom of movement. Bombay Police Act, 1951 (XXII of 1951) - Secs.56, 57 & 59 - Delay in passing the order of externment is not necessarily fatal - However, it is desirable that such orders are passed promptly - It is for the Externing Authority to explain the delay, and if there is absence of sufficient explanation, the order would be quashed.

5. Considering the facts of the present case and ratio laid down by this court in the aforesaid judgement, relied upon by the learned counsel for the petitioner, it

is clear that relying upon the offence registered against the petitioner in the month of July, 1999, the externing authority has passed the impugned order on 20/12/2000 and therefore, there is an inordinate delay in passing the impugned externment order which is not explained by the externing authority, which vitiates the impugned externment order and, hence in view of the aforesaid judgement relied upon by the learned counsel for the petitioner, the impugned externment order is required to be quashed and set aside.

6. For the foregoing reasons, the petition is allowed. The impugned externment order dated 20/2/2001 passed by the respondent No.1 in appeal (Annexure-B), confirming the externment order dtd.20/12/2000 passed by the respondent No.2 (Annexure-A), is hereby quashed and set aside. Rule is made absolute to the aforesaid extent. D.S. is permitted.

(R.P. DHOLAKIA, J.)